



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

February 27, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket), Room: 3334, Mail Code: 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Subject: Docket ID No. EPA-HQ-OAR-2004-0094

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed amendments to the NESHAP: General Provisions (40 CFR 63, Subpart A and related subparts) which would revise the Once-In-Always-In (OIAI) policy established by John Seitz in May 16, 1995. I am submitting the following comments on behalf of the Wisconsin Department of Natural Resources' Bureau of Air Management. Under the 1995 policy, a source that limits its PTE and thereby attains area source designation by the first compliance date of the MACT is not subject to major source requirements; and a source that does not have a PTE limit in place by the first substantive compliance date would be subject to major source MACT, regardless of its subsequent HAP emissions. The proposed regulatory amendments, if finalized, would replace the 1995 OIAI policy and allow a major source of HAP emissions to become an area source at any time by limiting its PTE for HAP to below the major source thresholds. This letter summarizes our significant concerns regarding the proposed amendments. The attachment to this letter contains additional specific concerns.

Inconsistent with the Clean Air Act Emission Reduction Objectives

In the 1995 Seitz memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the "maximum achievable emissions reductions that Congress mandated for major sources would not be achieved." This evaluation and assertion still hold true today.

The preamble to the proposed policy change appears to ignore the objective of the Clean Air Act of reducing hazardous emissions and the health risk from these emissions. The 1995 OIAI policy and the Clean Air Act took a planning perspective of the major sources at the time and developed a program to reduce emissions from those major sources. The current proposal now circumvents that plan by artificially removing sources from the group of sources that were intended to achieve technology based reductions. By removing the OIAI policy, EPA essentially re-writes Section 112 of the Clean Air Act to set, as an objective, emissions of no more than the major source thresholds (10 tons per year of any individual HAP and no more than 25 tons per year of a combination of HAPs) from any facility. Rather than achieve the full emission reduction possible due to applying the technology based level of emission control required under the Clean Air Act, this proposed change would allow just enough reduction to get emissions below the major source thresholds. More on this in the specific comments appended to this letter.

From the preamble, the rationale for this change appears to be simply that EPA has the authority to make such a change, so it will. Some speculation is provided that there may be a few cases where a source may actually reduce emissions as a result of this change, and a best case speculation is provided on how sources in general may respond to the change. However, no worst case or down-side consideration is provided. It is like considering an investment by only looking at the possible gains, without considering the possibility for loss. It is very likely that emissions will increase as a result of the proposed policy change exactly as stated in the 1995 Seitz memorandum. See the specific comments appended to this letter for more detail.

Removes Funding for Compliance Assurance And Enforcement

The proposed policy change would also undermine compliance assurance and enforcement of Section 112 of the Clean Air Act by removing affected sources from Title V funded programs. The proposed policy change would encourage sources to take synthetic minor permit limits to cap HAP emissions below the major source thresholds. These sources then would no longer be subject to Title V permit requirements and compliance assurance and enforcement activities for these sources would not be supported with Title V funding. Even if these sources would become subject to area source standards, EPA has been exempting area sources from Title V permit requirements, so Title V funding would still not be available.

The EPA CMS Policy requires the permit authority to inspect, on a specified recurring frequency, synthetic minor sources that emit over 80 percent of the major source threshold. Therefore, states like Wisconsin are expected to provide compliance assurance and enforcement for affected sources without the support of Title V funding. The effect of the proposed policy change would be to continue the compliance assurance and enforcement workload for these sources, while removing the source of funding for that work. Note also that in contrast to the assumption in the preamble that sources would cap emissions at levels comparable to the emissions allowed under MACT requirements (i.e. much lower than the major source thresholds), no sources in Wisconsin have requested synthetic minor emission limits more stringent than the major source threshold, even if the source's actual emissions are far less than the major source thresholds. If sources did want to now make such a change to their permit limits, the permits would need to be revised. This would be an increase in non-Title V funded permit workload resulting from the proposed change. Finding the resources to complete such a permitting effort would put an additional strain on an already resource limited program.

Summary: May 15, 2003, Proposed Rule Provided a Better Solution

In summary, the 1995 OIAI policy is not perfect, but the currently proposed changes are far worse. The 1995 OIAI policy could be improved as discussed in the May 15, 2003 proposed change to the General Provisions. At that time EPA worked with the state and local permitting authorities to enhance the policy. The May 2003 proposal would have resolved most of the problems with the 1995 policy without increasing emissions and without undermining implementation and funding of Section 112 of the Clean Air Act. EPA should return to the May 15, 2003, proposed rule change for the OIAI policy, and promulgate it with minor changes as described in the July 14, 2003 comment letter on the proposed rule submitted by STAPPA/ALAPCO (now NACAA, see EPA-HQ-OAR-2002-0044-0038). EPA should disregard or otherwise rescind the current proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Kessler". The signature is fluid and cursive, with the first name "Kevin" and last name "Kessler" clearly distinguishable.

Kevin Kessler, Director
Bureau of Air Management

Specific Comments

EPA requested comments on various topics in the preamble. The following presents portions of the preamble text with comments following it.

From Pages 73 & 74. First, many sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, i.e., the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

... we believe it is unlikely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule.

Comment: Control devices such as oxidizers can be operated or bypassed. For example, in the control of VOC emissions some source are only required to operate controls during the ozone season. Similarly, sources can bypass controls and emit uncontrolled HAPs part of the year and control HAPs only to the extent needed to keep annual emissions below the 10 tpy/25 tpy major source threshold. For the many surface coating MACTs and sources that use compliant coatings, the source would only need to use compliant coatings to the extent needed to keep annual emissions below the major source threshold. The assumption that sources would maintain their MACT level of controlled emissions because controls cannot be operated to only provide partial reduction is unfounded under an annual time frame. Monthly compliance demonstration does not change this situation because sources typically request and receive monthly limits based on a 12 month rolling average. Therefore, it is very likely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard could and would increase its emissions in response to this rule. In essence, the currently proposed changes remove what were anti-backsliding provisions of the 1995 policy. Sources would have an economic incentive (reduced costs due to not operating control equipment, less cost for noncompliant coatings) to increase HAP emissions.

From Page 75. We are thus proposing that sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures. We propose that such sources have the same period of time to comply with the revised MACT standard as is allowed for existing sources subject to the revised standard.

Comment: Determining when to allow additional time is difficult from a practical implementation standpoint. The terms “physical change, install additional controls and/or implement new control measures” are very nebulous and could apply to even the most trivial situations. For consistency across the nation, and considering that these sources already have been major and should have already complied with the MACT, and considering that this proposal assumes sources will maintain the MACT level of control even if it is not required, sources should be required to meet the major source MACT requirements without further delay. Therefore, existing sources that were major, then cap emissions to avoid the MACT, and then return to major source status should be required to comply with the MACT immediately upon becoming a major source again. Otherwise, this proposal should assume major sources that cap emissions below the major source thresholds will increase HAP emissions and prepare an environmental assessment of the resulting increase.

From Page 76. To the extent an area source standard applies, the compliance date for that standard has passed, and the source needs a compliance extension, the source must apply for and obtain that compliance extension before becoming subject to the area source standard; otherwise, the source will be in violation of the area source standard.

Comment: Sources subject to the area source standard typically are exempt from Title V permitting and EPA does not allow work related to that source to be supported by Title V funds. Permitting authorities like Wisconsin DNR do not have many resources available for non-Title V work. If EPA hopes to delegate the area source program to state and local agencies, program implementation will need to be streamlined and simple. Case-by-case determinations are time consuming and costly.

From Page 77. *We solicit comment on all aspects of the proposed new regulatory provisions at 40 CFR 63.1(c)(6)(i) and (ii). For either of the two situations described above (i.e., where a source switches from major, to area, and back to major source status, and where a source switches from major to area source status)...*

Comment: EPA has been exempting area sources from Title V permitting. A source that switches from major source, to area source, and then back to major source again would need permit changes from a Title V permit, to a non-Title V permit, and back again to a Title V permit. Administratively, this is very costly. Perhaps these sources should remain Title V sources at least until permit renewal. If frequent changes are likely, they should probably remain subject to the MACT. It is not clear what purpose is served by allowing frequent changes in the applicable requirements and the permit status. The proposed change is administratively costly for the source and the permit authority, and serves no environmental purpose.